DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Rockville, MD 20857

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Division of Payment Management
P. O. Box 6021
Rockville, MD 20852

Ms. Cynthia L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
Room 420
401 14th Street, S.W.
Washington, DC 20227

Dear Ms. Johnson:

I am writing to offer my comments on proposed rule 31 CFR 208 published in the Federal Register on September 16, 1997.

Overall, the proposed rule does not sufficiently address disbursements made in support of Federal grants or contracts (program payments). While the majority of disbursing activity targets individual benefit recipients, I believe Treasury could use the opportunity presented by this rule to differentiate how grant and contract program payments will be regulated compared to individual benefit payments. By including additional safeguards relating to program payments, millions of dollars in lost interest earnings, based on funds prematurely drawn from the Treasury, will be saved.

Proposed § 208.6(b)(2) allows program payments to be deposited into the recipient's accounts in financial institutions that are under the jurisdiction of investment brokers. These accounts are controlled by both the broker and the recipient. The provisions of this section conflict with the opinion you imparted to my staff in your letter of January 25, 1996 in which FMS concurs with our decision to not allow electronic deposits to investment accounts.

This Division has previously offered were four reasons for refusing requests to deposit funds in investment accounts. They are:

- o Interest earned on Federal funds, should accrue to the Federal government, not members of the grant community.

EFT #075

- Funds should be drawn as closely as possible to the time checks and/or warrants are redeemed at the grantee's bank. This would negate or grossly reduce the "float" time to which investment firms have access to these unspent grant funds.

- Allowing this practice gives tacit approval to grantees drawing their funds prematurely or in excess of their needs.

- Due to the mechanics of posting earnings and losses that naturally occur in investment accounts, the grantee no longer retains sole control over the cash balances in these accounts.

The basis for the first three points are drawn directly from OMB Circular A-110. Grantees are required to minimize the time elapsing between the transfer of Federal funds and the issuance of checks or warrants. They are also required to have written procedures enforcing this rule. Allowing 31 CFR 208.6(b)(2) to stand as it is invalidates the provisions of A-110 and all the agencies' efforts to encode the circular in their particular regulations.

Regarding the fourth point, we have the concurrence of three of our clients (National Institutes of Health, Center for Disease Control and Health Care Financing Administration). They agree that this Division must not allow credits to investment accounts due to the inherent risks involved. In support of this point, we have a documented conversation with a broker in which he concedes the investments, funded with undisbursed grant or contract funds, could possibly deflate in value, in which case, the loss will have to be funded through other means. If the investor has no other resources, the grant funds would be permanently lost.

In addition, the Federal Register analysis contains the statement that with brokerage accounts "...funds...are swept out of such accounts on a regular basis...". I believe this function is improper in two respects. First, it is evidence of a lack of control by the grantee over the balance(s) in these accounts. It has always been my position that any access to unspent grant funds by persons other than the grantee demonstrates an unacceptable lack of internal control.

In the "Section by Section" analysis of the comments received by the Treasury, the statement is made that

> "...Treasury sees no reason to discourage recipients of Federal payments from using these [investment] services provided certain protections are available..."

such as dealing only with registered securities dealers and dealers who protect funds on deposit through deposit insurance. This may be fine for recipients receiving benefit payments from the Federal Government but is not acceptable when organizations are entrusted with Federal dollars to accomplish a particular program goal or objective.

It is not the failure of financial institutions, or loss of funds through misuse or fraud, that most jeopardizes unspent grant funds but the economic forces of the open market. Investment values fluctuate on a daily basis with some ventures more volatile than others.

The only certainty associated with funds invested in the market is that they are at risk and it is that risk which is unacceptable. Grant funds are awarded to accomplish a specific goal. If grant funding is lost through the dynamics of the open market, the attainment of the grant's goal is threatened.

One final point to consider is that OMB Circular A-110 states any interest over the amount of $250.00 must be returned to the government. Except for grant recipients receiving less than $120,000, there should be no incentive to earn more on Federal funds. An argument could be made that dividends earned on investments are not covered by this rule and need not be remitted to the Treasury. I maintain the rule applies to all earnings regardless of whether they are deemed to be interest or dividends. Clearly, the intent of OMB's rule is to force the deposit of these earnings into the government's accounts and not private investor's accounts since the earnings are based on the government's cash balances.

Rule 208, as stated, practically invites grantees to establish a level of "float" in their accounts. The cost in missed Federal investment opportunities, and in Federal enforcement, would far outweigh any appreciable benefit to enacting this new rule with respect to Federal grantees.

If you would like to discuss these comments, or any other salient points, please call me on (301) 443-1660.

Sincerely,

Harry C. Bradford

Harry C. Bradford
Director